

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER:	1519.00
COMPLAINT INVESTIGATOR:	Steve Starbuck
DATE OF COMPLAINT:	January 27, 2000
DATE OF REPORT:	February 18, 2000
REQUEST FOR RECONSIDERATION:	yes (revisions to original report are undercored)
DATE OF CLOSURE:	May 30, 2000

COMPLAINT ISSUES:

Whether the MSD of New Durham Township and the South LaPorte Special Education Cooperative violated:

511 IAC 7-13-2(b) with regard to the School's alleged failure to provide a student with a disability with an instructional day of the same length provided to elementary students without disabilities during the 1998-1999 school year.

511 IAC 7-4-1(b) and 7-3-23 with regard to the School's alleged failure to implement the Student's individualized education program (IEP) as written from mid-August through mid-October 1999.

As a result of the need for additional information subsequent to the request for reconsideration, the deadline for the reconsideration response was extended from March 27 to April 14, 2000.

FINDINGS OF FACT:

1. The Student is a ten year old, third grade student, who is eligible for special education and related services due to a mild mental handicap and a communication disorder.
2. The Student did not attend her home school for part of the 1997-1998 school year and for the entire 1998-1999 school year. The Student received instruction at another nearby elementary school. It is noted in the CCC Summary Report written on April 30, 1998, that the Student requires intensive one-on-one instruction, which was the reason the Student was not attending her home school. Under the heading, Transportation, it indicates that the Student requires special services beyond the amount of time available at her home school. Neither the IEP nor the CCC Summary Report of April 30, 1998, mentions anything about the length of the Student's instructional day. The Director acknowledges that during the 1998-1999 school year, the Student received an instructional day that was shorter than that which was provided to non-disabled students at the same elementary school. The Director states the Student's school of attendance had an instructional day that was fifty minutes longer than that of the Student's home school. The parent states during the 1998-1999 school year, her child's instructional day was approximately fifty minutes shorter than that of general education students attending the same elementary school.
3. CCC notes dated August 31, 1998, document that the parent expressed on several occasions her discontent with her child receiving a shorter instructional day than non-disabled students at the same elementary school. Page one of the CCC notes state the parent left the conference, and that no changes were made to the program. The last page of the CCC notes state that school staff will

investigate adjusting times for art and music classes, and will speak with the bus drivers about changing times for transporting the Student. Based on the CCC notes of August 31, 1998, the CCC did not reach a consensus that the Student should continue receiving a shorter instructional day than non-disabled students at the same elementary school.

4. The Student attended her home school from mid-August through mid-October 1999. During the investigation of Complaint #1480.99, the teacher of service stated on November 22, 1999, that the four full-time special education students in her classroom required more one-on-one instructional time than she or the aide could provide for the students' IEPs to be implemented as written. The time frame mentioned by the teacher of service for non-implementation of the four full-time special education students' IEPs was from mid-August through mid-October 1999. On February 14, 2000, the teacher of service stated that the Student involved in this complaint investigation was one of the four students she spoke of on November 22, 1999. The teacher of service stated that the Student involved in this complaint investigation was one of the four students she spoke of on November 22, 1999. The parent states that her child was one of the four full-time special education students assigned to this classroom from mid-August through mid-October 1999.
5. The Student's IEP for the 1999-2000 school year included goals for reading, language, math, science/social studies, and reading for which the classroom teacher was responsible for implementing related objectives on a daily basis. In its request for reconsideration, the School submitted an affidavit from the teacher of service that she was able to implement the student's IEP between August and mid-October, 1999, but she was concerned that continued implementation of the IEP would be problematic.
6. The "schedule" of classroom activities indicates that the Student was to receive instruction in spelling, reading, language, and math each day. Lesson plans were submitted; however, the date is not apparent on a number of pages. Some pages are identified as the plan for a single day, and other pages include daily plans for a week. The pages identify instructional activities and objectives scheduled for the day for various students. The lesson plans do not consistently identify reading, language, and math instructional activities on a daily basis. Some days include plans for all three areas, and on other days, plans for one or more of these areas are absent. Because third grade students spent time preparing for and participating in ISTEP testing during the first nine weeks, instruction in science and social studies was not provided until after the Student transferred to a different school.

CONCLUSIONS:

1. Findings of Fact #2 and #3 indicate that the School failed to provide the Student with an instructional day for the 1998-1999 school year of the same length which was provided to other elementary students without disabilities. Therefore, a violation of 511 IAC 7-13-2(b) is found.
2. Findings of Fact #4, #5, and #6 reflect that the School failed to implement the Student's IEP as written from mid-August through mid-October 1999. Therefore, a violation of 511 IAC 7-4-1(b) and 7-3-23 is found.

DISCUSSION:

511 IAC 7-13-2(b) requires the length of an instructional day for elementary special education students be the same length as the instructional day for elementary students in the same building unless the case conference committee determines otherwise. It is expected that if the case conference committee determines a shortened instructional day is appropriate, it is because of the unique needs of the student. The school's transportation system or schedule is an insufficient justification for a shortened instructional day. If the CCC agrees that placement and services shall be provided at other than the student's home school, the student is entitled to a full instructional day absent personal circumstances which make a full instructional day inappropriate for the student. It is not acceptable for the school to agree to a student's placement with the condition that the student will have a shortened instructional day because of the transportation schedule.

The Department of Education, Division of Special Education, requires the following corrective action based on the Findings of Fact and Conclusions listed above.

CORRECTIVE ACTION:

The MSD of New Durham Township and the South LaPorte Special Education Cooperative shall:

1. Convene a CCC meeting to determine the need for compensatory services as a result of the shortened instructional day during the 1998-1999 school year and as a result of the failure to fully implement the Student's IEP in the first two months of the 1999-2000 school year. Submit to the Division no later than April 28, 2000, a copy of the CCC Summary Report and any amended IEP.
2. Send a memorandum to all appropriate staff reminding them that the length of the instructional day for elementary level special education students must be the same as the instructional day for elementary level general education students in the school building where the program is located, unless the CCC determines otherwise. Submit to the Division no later than April 28, 2000, a copy of the memorandum and a list of all individuals to whom the memorandum was sent.